78-1269

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

NOVEMBER TERM, 1978

LUKE A. MEADOWS, *Petitioner*

v.

CHARLES W. O'BRIEN, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO ~~THE UNITED STATES~~ SUPREME COURT

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CONSTITUTIONAL PROVISIONS

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U. S. Constitution 14th Amendment 4

The petitioner Luke A. Meadows respectfully prays that a writ of certiorari issue to review the judgment and opinion of the State of Ohio Supreme Court entered in this proceeding on September 8, 1978.

Opinion Below

The opinion of the Supreme Court of Ohio appears in the Appendix hereto. The opinions of the Franklin County Court of Appeals in Franklin County Common Pleas Court are also Appended hereto.

Jurisdiction

The judgment of the Ohio Supreme Court was entered on June 30, 1978. A timely petition for rehearing was denied on September 8, 1978, and this petition was filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

Questions Presented

1. Whether a delay of seventeen (17) months by the Trial Court when the Trial Court sits as trier of fact is a denial of due process as set forth in the Fourteenth (14th) Amendment to the United States Constitution when the Trial Court renders its decision based upon the testimony of a great number of witnesses without the benefit of a written transcript of the proceedings.

Statutory Provisions Involved

United States Constitution 14th Amendment

> 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

A dispute arose between two individuals resulting in the filing of criminal charges of conversion of trust property. This case involves the complaint by petitioner that the criminal charges were in fact the malicious prosecution of petitioner.

The Court listened to extensive testimony regarding the issues at bar. The Court in its written decision, filed seventeen (17) months following the taking of evidence, found that petitioner failed to prove by a propounderance of the evidence that respondent lacked probable cause to file the criminal charge.

The Franklin County Court of Appeals affirmed the

judgment of the Trial Court in stating that reasonable minds could find that there was sufficient evidence for the Trial Court's judgment.

Reason for Granting Writ

It is respectfully submitted that the foregoing issue is of surmounting interest and importance to the citizens of the United States.

For a great many years, the Judicial System of the United States has been criticized for congested dockets and long delays in the final determination of legal actions.

For this reason, the Supreme Court of Ohio has adopted the Rules of Superintendence.

As stated in those rules, "Delay in both Criminal and Civil cases in the trial Court's of Ohio is presently the most serious problem in the administration of justice in this State."

The right to present one's case in a Courtroom for determination by either a judge or jury is a basic right set forth in the United States Constitution. This right must be preserved in accordance with due process of laws of the Fourteenth Amendment in the United States Constitution. Due process also includes the concept of legal process without unreasonable delay. When evidence has been presented to the Court and the Court delays seventeen months (17) rendering its decision the delay is unreasonable when the Trial Court is rendering its decision based upon its memory of the testimony.

Such a delay deprives a party his right to have the Court consider all of the testimony presented at trial since the Court cannot possibly remember after seventeen (17) months what the testimony was. When the Trial Court sits as the trier of fact, the Trial Court must within the limits of reason make the necessary factual determinations. If a jury had sat as the trier fact in this case, the jury would have immediately retired to the jury room and begin efforts to determine the issues of fact. Certainly the Trial Court, when sitting as trier of fact, is given more time than a jury panel making the factual determinations, but a delay of seventeen (17) months denies the parties a trial in which all of the evidence is considered as required by the Due Process provisions of the United States Constitution.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ohio Supreme Court.

Respectfully submitted,

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Appendix A

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

LUKE A. MEADOWS,

Plaintiff,

—*vs*—

CHARLES WILLIAM O'BRIEN,

Defendant,

Case No. 74 CV 02 524

DECISION
Judge Tyack

Facts

This case involves a complaint by the Plaintiff for malicious prosecution stemming from circumstances which resulted in an act by the Defendant in filing charges of conversion of trust property, specifically, a refrigerator, and a counterclaim involving the Defendant's claim of malicious prosecution against the Plaintiff when the Plaintiff charged the Defendant in Franklin County Municipal Court with Breach of Peaceful Possession.

The testimony surrounding some of the events and circumstances was in dispute; however, some of the facts according to the testimony remain undisputed as follows:

The apartment unit known as 111 East Ninth Avenue initially was owned by the Prairie Corporation and was leased to the Columbus Metropolitan Housing Authority for the purpose of providing rental units for low income individuals.

The property was purchased from the Prairie Corporation by Karen Sue O'Brien (the wife of the Defendant) pursuant to a contract sale entered into between Charles O'Brien and Karen Sue O'Brien with the Prairie Corporation on September 19, 1972. Karen Sue O'Brien took possession of the property on May 1, 1973. Management was given to the College Town Management Co., Inc., by a lease agreement. One of the units subject to this sale was the apartment at 111 East Ninth Avenue and the occupant of that unit was the Plaintiff, Luke A. Meadows.

The Plaintiff had been occupying the premises on a month to month lease agreement with the Columbus Metropolitan Housing Authority.

On April 30, 1973, the Plaintiff retained the ABCA Moving Company to move his belongings from the unit to home he purchased on Republic Avenue. He left some property in the apartment, which he intended to return for by May 1, 1973.

On May 1, 1973, employees of the College Town Management Co., Inc., came to the said premises at 111 East Ninth Avenue and among other things in addition to clean-

ing the apartment, commenced to redecorate the same and they removed certain items by throwing them out. These items belonged to Mr. Meadows. While this was being done, Mr. Meadows returned to the unit and had to call the police because of the incident that followed his arrival at the premises.

Shortly thereafter Mr. Meadows went to the Columbus Police Department and filed charges against the Defendant for Breach of Peaceful Possession pursuant to City Code Section 2327.17. On May 9, 1973, following the filing of a replevin action by this Plaintiff, Plaintiff regained the property which the Defendant, by this date, had placed in a garage after removing it from the apartment and most of which, on this date, according to the Plaintiff, was damaged considerably by water and rain.

The Plaintiff filed two civil actions in the Municipal Court of Franklin County for damages against the Defendant and the said misdemeanor charge. The misdemeanor charge was nolle prossed by one of the assistant city prosecutors after some understandable delay caused by the Court.

On October 2, 1973, the Defendant, with his attorney, filed charges against the Plaintiff for conversion of the refrigerator which the Defendant claimed was missing

from the apartment. The conversion charge was brought pursuant to the Ohio Revised Code Section 2907.39. In this charge Defendant stated that Mr. Meadows had converted a Frigidaire refrigerator of the value of $170.00. This charge was denied by the Plaintiff after he was arrested, handcuffed, and placed in jail. Plaintiff was released thereafter on his own recognizance for $1,000.00. On December 5, 1973, the charge was nolle prossed by the Municipal Court when the prosecuting witness, Mr. O'Brien failed to appear for the trial.

On February 11, 1974, the Plaintiff filed his action against the Defendant for malicious prosecution and approximately four days later the Defendant refiled the charges against the Plaintiff for conversion and another charge, that of trespass. Both of these cases were heard on the merits on April 25, 1974, and both cases were dismissed.

The elements which the Court must consider in determining liability on behalf of the either party for the charges are as follows:

1. Malice in instituting or continuing the prosecution
2. Lack of probable cause
3. Termination of prosecution in favor of the party charged

With regard to the Plaintiff's complaint, the Court finds

that the Plaintiff failed to prove by a preponderance of the evidence that the Defendant lacked probable cause. The evidence showed by a reasonable deduction that a refrigerator could be missing from the apartment and that the Plaintiff failed to offer proof of evidence upon which damages could be ordered.

The Court finds that the Defendant acted as a reasonable prudent man should prior to the filing of the conversion charge against the Plaintiff.

Therefore, Plaintiff's complaint is ordered dismissed and the Plaintiff is ordered to pay the costs.

Taking up the matter of the Counter-claim of the Defendant against the Plaintiff.

The criminal charges by the Plaintiff charging the Defendant with Breach of Peaceful Possession were filed on May 1, 1973. These charges were dismissed by the Prosecutor on June 10, 1974.

Defendant has failed to prove by a preponderance of the evidence that Plaintiff lacked probable cause when he filed the charges; and the Defendant failed to prove by a

preponderance of the evidence that Mr. Meadows ever intended to file with malice.

As to the Counter-claim the Court finds in favor of the Plaintiff and against the Defendant. Therefore, the Defendant's Counter-claim is dismissed at Defendant's costs.

HONORABLE DOMINICK E. OLIVITO

Appendix B

IN THE COURT OF APPEALS
FRANKLIN COUNTY, OHIO

LUKE A. MEADOWS,

Plaintiff-Appellant,

—*vs*—

No. 77AP-423

CHARLES WILLIAM O'BRIEN,

Defendant-Appellee,

(The Merchants Property Insurance Company of Indiana.

Third Party
Defendant-Appellee.)

DECISION

Rendered on March 7, 1978

MR. THOMAS R. MCGUIRE,
595 East Broad Street,
Columbus, Ohio 43215,
For Plaintiff-Appellant.

KEMP, SCHAEFFER & ROWE
MR. MICHAEL N. SCHAEFFER,
45 North Wilson Road,
Columbus, Ohio 43204
For Defendant-Appellee.

LANE, ALTON & HORST,
MR. JEFFREY W. HUTSON, of Counsel,
155 East Broad Street,
Columbus, Ohio 43215
For Third-Party Defendant-Appellee.

This is an appeal from a judgment of the Court of Common Pleas, Franklin County, Ohio.

This case was tried to the Court and involves a lengthy transcript including a total of 993 pages. At any rate, the trial court set forth in detail the facts in his decision, which we quote verbatim as follows:

"This case involves a complaint by the Plaintiff for malicious prosecution stemming from circumstances which resulted in an act by the Defendant in filing charges of conversion of trust property, specifically, a refrigerator, and a counter-claim involving the Defendant's claim of malicious prosecution against the Plaintiff when the Plaintiff charged the Defendant in Franklin County Municipal Court with Breach of Peaceful Possession.

"The testimony surrounding some of the events and circumstances was in dispute; however, some of the facts according to the testimony remain undisputed as follows:

"The apartment unit known as 111 East Ninth Avenue initially was owned by the Prairie Corporation and was leased to the Columbus Metropolitan Housing Authority for the Purpose of providing rental units for low income individuals.

"The property was purchased from The Prairie Corporation by Karen Sue O'Brien (the wife of the Defendant) pursuant to a contract of sale entered into between Charles O'Brien and Karen Sue O'Brien with the Prairie Corporation on September 19, 1972. Karen Sue O'Brien took possession of the property on May 1, 1973. Management was given to the College Town Management Co., Inc., by a lease agreement. One of the units subject to this sale was the apartment at 111 East Ninth Avenue and the occupant of that unit was the Plaintiff, Luke A. Meadows.

"The Plaintiff had been occupying the premises on a month-to-month lease agreement with the Columbus Metropolitan Housing Authority.
"On April 30, 1973, the Plaintiff retained the ABCA Moving Company to move his belongings from the unit to a home he purchased on Republic Avenue. He left some property in the apartment, which he intended to return for by May 1, 1973.

"On May 1, 1973, employees of the College Town Management Co., Inc., came to the said premises at 111 East Ninth Avenue and among other things in addition to cleaning the apartment, commenced to redecorate the same and they removed certain items by throwing them out. These items belonged to Mr. Meadows. While this was being done, Mr. Meadows returned to the unit and had to call the police because of the incident that followed his arrival at the premises.
"Shortly thereafter Mr. Meadows went to the Columbus Police Department and filed charges against the Defendant for Breach of Peaceful Possession pursuant to City Code Section 2327.17. On May 9, 1973, following the filing of a replevin action by this Plaintiff, Plaintiff regained the property which the Defendant, by this date, had placed in a garage after removing it from the apartment and most of which, on this date, according to the Plaintiff, was damaged considerably by water and rain.

"The Plaintiff filed two civil actions in the Municipal Court of Franklin County for damages against the Defendant and the said misdemeanor charge. The misdemeanor charge was nolle prossed by one of the

assistant city prosecutors after some understandable delay caused by the Court.

"On October 2, 1973, the Defendant, with his attorney, filed charges against the Plaintiff for conversion of the refrigerator which the Defendant claimed was missing from the apartment. The conversion charge was brought pursuant to Ohio Revised Code Section 2907.39. In this charge Defendant stated that Mr. Meadows had converted a Frigidaire refrigerator of the value of $170.00. This charge was denied by the Plaintiff after he was arrested, handcuffed, and placed in jail. Plaintiff was released thereafter on his own recognizance for $1,000.00. On December 5, 1973, the charge was nolle prossed by the Municipal Court when the prosecuting witness, Mr. O'Brien failed to appear for the trial.

"On February 11, 1974, the Plaintiff filed his action against the Defendant for malicious prosecution and approximately four days later the Defendant refiled the charges against the Plaintiff for conversion and another charge, that of trespass. Both of these cases were heard on the merits on April 25, 1974, and both cases were dismissed.
"The elements which the Court must consider in determining liability on behalf of the either party for the charges are as follows:
"1. Malice in instituting or continuing the prosecution.
"2. Lack of probable cause.
"3. Termination of prosecution in favor of the party charged.

"With regard to the Plaintiff's complaint, the Court finds that the Plaintiff failed to prove by a preponder-

ance of the evidence that the Defendant lacked probable cause. The evidence showed by a reasonable deduction that a refrigerator could be missing from the apartment and that the Plaintiff failed to offer proof of evidence upon which damages could be ordered.

"The Court finds that the Defendant acted as a reasonable prudent man should prior to the filing of the conversion charges against the Plaintiff.

"The criminal charges by the Plaintiff charging the Defendant with Breach of Peaceful Possession were filed on May 1, 1973. These charges were dismissed by the Prosecutor on June 10, 1974.

"Defendant has failed to prove by a preponderance of the evidence that Plaintiff lacked probable cause when he filed the charges; and the Defendant failed to prove by a preponderance of the evidence that Mr. Meadows ever intended to file with malice.

"As to the Counter-claim the Court finds in favor of the Plaintiff and against the Defendant. Therefore, the Defendant's Counter-claim is dismissed at Defendant's costs".

Appellant has now perfected this appeal, including the following two assignments of error:

"1. The findings of the trial court that the Plaintiff failed to prove by a preponderance of the evidence that the Defendant lacked probable cause in filing the criminal conversion charge, and that the Defendant acted as a reasonable and prudent man should in filing the criminal conversion charge are against the manifest weight of the evidence.

"2. The finding of the trial court that Plaintiff failed to offer evidence upon which damages could be ordered is against the manifest weight of the evidence and contrary to law."

The parties do not dispute the trial court's findings of fact. Hence, the issue is whether reasonable minds could reach the judgment of the trial court. The ultimate question was whether appellant failed to prove by a preponderance of the evidence that appellee lacked probable cause in filing the complaint. Probable cause is defined in Melanowski v. Judy (1921), 102 Ohio St. 153, in paragraph 2 of the syllabus:

"In determining the want of probable cause, the defendant's conduct should be weighed in view of his situation and of the facts and circumstances which he knew or was reasonably chargeable with knowing at the time he made the criminal complaint."

Upon a careful review of the total transcript, along with the trial court's statement of facts, reasonable minds could find that there was sufficient evidence for the trial court's judgment. The trial court determined these questions involving facts and circumstances, which was within its province. Therefore, appellant's first assignment of error is not well taken and is overruled.

As to appellant's second assignment of error, the trial court specifically found in the foregoing decision that appellee lacked probable cause in filing the charges; and therefore the court was not required to determine the issue of damages. Thus, it is not necessary for this court to reach this assignment of error.

Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

HOLMES, P. J. and STRAUSBAUGH, J., concur.

Appendix C

THE SUPREME COURT
THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus,

1978 TERM

To wit: September 7, 1978

LUKE A. MEADOWS,
Appellant,

vs.

CHARLES W. O'BRIEN,
Appellee.

No. 78-556
REHEARING

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, of Clerk the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court,

to wit, from Journal No._____Page_____

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 7th day of September, 1978.

THOMAS L. STARTZMAN, Clerk

By_____Deputy